

Remarks

The claims were amended in accordance with the amendments above. The amendments to the claims are being made merely to clarify the claimed invention. All of the amendments are fully supported by the specification, claims, and figures as originally filed. No new matter is believed or intended to be involved.

Applicant respectfully submits that the amendments and remarks contained herein only apply to the present application and should not be construed as having any bearing whatsoever on the scope and/or construction of any claims in any other pending patent applications or issued patents.

Pending Claims

The Applicant would like to address a typographical error regarding the claims that are currently pending in the present application. In the Office Action dated 01/12/2009, the Office failed to include claim 23 in the listing of pending claims in items 4 and 6 on the "Office Action Summary" and in paragraph 2 on page 2 of the current Office Action. Based on the Applicant's current response, the Applicant's previous response filed 11/3/2008, and the facts that the Office included claim 23 in the listing of rejected claims in paragraph 4 on page 2 of the current Office Action, and addressed claim 23 on page 4 of the current Office Action, Applicant respectfully submits that claims 14-19, 22-23, 73-79, and 83-84 are currently pending.

Standard for Obviousness Rejections

In the Office Action dated 01/12/2009, claims 14-17, 22-23, 73-79, and 83-84 were rejected under 35 USC §103(a) as being unpatentable over Cohen (U.S. Pat. 6,060,993). Claims 18-19 were rejected under 35 USC §103(a) as being unpatentable over Cohen in view of Cragun (U.S. Pat. 5,504,675).

Under MPEP 2143.03, in order to establish a *prima facie* case of obviousness, the Office must give due consideration to all of the limitations of a claim. In addition, the seminal question is not whether the individual differences between the prior art and the claims would have been obvious. Rather, the ultimate issue is "whether the claimed invention as a whole would have

been obvious.” MPEP 2141.02 The present Office Action improperly dissects the claims into discrete limitations and simply declares that each limitation is either taught by the prior art or that it would have been obvious to modify the prior art to include such limitation. Such analysis is clearly improper, as it ignores the requirement that obviousness be determined based on the claimed invention as a whole.

The Office must also sufficiently establish a motivation to combine or modify the teachings of the prior art in order to reach a claimed invention in accordance with MPEP 2143.01. Obviousness rejections “cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1395-97 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). For at least the reasons set forth below, Applicant respectfully submits that the combined art of record fails to render any of the present claims obvious.

The Prior Art of Record Does Not Teach or Suggest Every Limitation in Claim 74

Applicant submits that the art of record fails to teach or suggest all of the limitations recited in each independent claim in accordance with MPEP 2143.03. For instance, Applicant notes that amended independent claim 74 recites the step of “providing at least one advertising customer the opportunity to select at least one particular display screen via an advertising customer interface, wherein each particular display screen is positioned at a respective particular location.” In Cohen, a message is scheduled or designated to be displayed within a selected geographic zone, not on a particular display screen, as recited in amended claim 74 (See Cohen col. 1, line 67 - col. 2 line 4; col. 4, lines 53-60; and col. 5, lines 53-60). In the system described in Cohen, the advertising customer does not have any control over which particular display screens are located within the selected geographic zone at any given time. As a result, the advertising customer of Cohen is not provided the opportunity to select at least one particular display screen as recited in amended claim 74. In addition, the limitation recited in amended claim 74 that “each particular display screen is positioned at a respective particular location”¹

¹ It should be noted that claim 74, as previously written, was intended to encompass the same concept—i.e., advertising customers are given the opportunity to select a particular display screen which is positioned at a particular location. As noted in the specification, a display screen could be, for example, a billboard located

does not read on the mobile displays taught by Cohen. Cohen teaches mobile displays having a continuously transient location, rather than the displays positioned at respective particular locations recited in amended claim 74.

Applicant further notes that amended independent claim 74 recites the step of “providing the at least one advertising customer the opportunity to electronically order display of advertising content on the at least one selected display screen via the advertising customer interface.” The Office pointed to col. 4, lines 64 to col. 5, lines 1-3 of Cohen and argued that Cohen discloses “providing advertising the customers the opportunity to order display of advertising content at display screen locations selected by the advertising customers” (See Office Action dated 01/12/2009, p. 2). The Office explained further that “advertiser 28 chooses the advertisers content to display at various locations specified by the individual advertisers.” *Id.*² Not only does Cohen fail to teach or suggest that the advertising customer orders display of his/her content on at least one particular display screen selected by the advertising customer, the portion of Cohen cited by the Office actually teaches that it is the system, not the advertising customer, that chooses the content which is displayed on the various display screens.

In particular, the portion of Cohen cited by the Office states, in its entirety:

“Similarly if a monitored parameter is not in accordance with that specified for the message, e.g. vehicle travelling at rate of speed too great for zipper message, vehicle in zone where it is raining and advertiser does not wish to display sunscreen message, etc., the *controller selects* an alternate message from the memory or receives a new message from the station” (Cohen, col. 4, lines 64 to col. 5, lines 1-3) (emphasis added).

Based on this passage, as well as the remainder of Cohen, it is clear that the system taught by Cohen does **not** allow the advertising customer to electronically order display of advertising content on the at least one particular display screen selected by the advertising customer, as recited in claim 74. Instead, this portion of Cohen explicitly states that it is *the controller*

adjacent a specific highway at a specific milepost. While in some embodiments such a highway billboard might be identified to a customer on the basis of its specific location, that customer would nevertheless select the particular billboard rather than some broad geographic zone in which one or more mobile displays may or may not be. Therefore, the present amendments to claim 74 are simply intended to clarify the previously presented distinctions between this claim and the teachings of Cohen.

² The electronic ordering and customer interface aspects of this limitation were addressed separately by the Office, and, accordingly, will be discussed in more detail below.

located in each vehicle (i.e., the system), not the advertising customer, that determines which particular display screen specific advertising content will ultimately be displayed on. Because Cohen does not discuss providing an advertising customer with the opportunity to electronically order display of advertising content on the at least one particular display screen selected by the advertising customer via an advertising customer interface and the Office has not cited any other reference disclosing this feature to combine with Cohen, Applicant respectfully asserts that there is no reason to modify Cohen to obtain the present invention.

Further, Cohen actually teaches away from the present invention as recited by amended claim 74, and therefore it is not proper to modify or combine Cohen with any other reference to obtain the present invention. MPEP 2145. One of the “considerations” of the Cohen invention “is to provide a mobile display system of the general character described wherein message content on a vehicle mounted display is changeable as a function of a [sic] the physical location of the vehicle” (Cohen col. 2, lines 40-44). In fact, the whole point of Cohen is that it is the system, not the advertising customer, that determines when, if ever, a particular advertisement is displayed on a particular display screen based on where that moving display screen is located at any particular time. This clearly teaches away from providing an advertising customer the opportunity to select at least one particular display screen, as recited in claim 74. Cohen suggests that advertising content should be designated for display in a particular location zone, instead of selecting a particular display screen (See Cohen col. 1, line 67 - col. 2 line 4; col. 4, lines 53-60; and col. 5, lines 53-60). In the system described in Cohen, the advertising customer does not have any control over which particular displays are temporarily located in a particular zone at a given time, which is contradictory to the limitation recited in claim 74 that the advertising content should be displayed on the at least one particular display screen selected by the advertising customer.

Allowing a customer to select a particular display screen, as recited in claim 74, directly contradicts the goal of Cohen wherein the transient physical location of a display dictates what advertisement will be displayed. In addition, any proposed modification of the system taught by Cohen in order to allow customers to select a particular display positioned at a particular location for displaying advertising content would clearly render the Cohen system unsatisfactory for its intended purpose. Such a modification, even if possible, would also change the principle of

operation of the Cohen system (i.e., each individual vehicle controller in Cohen selects which content to display on that particular vehicle's display screen based on the vehicle's present location or one or more monitored parameters). Consequently, Cohen should not be modified or combined with any other reference to obtain the present invention, as doing so would defeat the primary purpose of the system described in Cohen. See MPEP 2143.01(v) and (vi).

The Office responded to these arguments in the most recent Office Action by pointing to col. 2, lines 58-61, which state: "A still further aspect of the present invention is to provide a mobile display system of the general character described wherein specific advertisements are displayed when and where the advertisers choose" (See Office Action dated 01/12/2009, p. 5). According to the Office, "by the advertisers choosing when and where to display the advertisements, the advertisers are in fact choosing the display screen associated within that location." *Id.* However, the section of Cohen cited by the Office only vaguely refers to allowing advertisers to choose a general location where advertisements are displayed, and does not teach or suggest allowing advertisers to select specific display screens, as recited in claim 74. In particular, the cited section of Cohen fails to mention anything regarding the step of "providing at least one advertising customer the opportunity to select at least one particular display screen via an advertising customer interface, wherein each particular display screen is positioned at a respective particular location." Due to the mobile nature of the displays in Cohen, the advertising customer can not possibly know that a specific mobile display will be in a specific location at a specific time. As mentioned above, instead of selecting a specific display screen, as recited by claim 74, the Cohen system is designed to allow advertising customers to designate a message for display within a general geographic area or "location zone" (See Cohen col. 1, line 67 - col. 2 line 4; col. 4, lines 53-60; and col. 5, lines 53-60). A message will be displayed on a particular display IF, AND ONLY IF, the vehicle carrying that display is determined to be in the location zone for which that message has been designated (and assuming any other parameters such as time of day, vehicle density, etc., are also met). Consequently, Applicant respectfully submits that a vague reference to selecting a general location and a system designed to allow a user to designate an advertisement for display within a general "location zone" does not teach or suggest selecting a specific display screen as recited by claim 74.

In addition, Applicant notes that claim 74 recites, and Cohen fails to teach or suggest, the step of “receiving advertising content from the advertising customers via an electronic communications link.” The Office argued that Cohen discloses such a step by pointing to col. 4, line 64, to col. 5, lines 1-3, and col. 5, lines 24-28 (See Office Action dated 01/12/2009, p. 2). The Office added that Cohen teaches “receiving advertisers profiles and customer preferences based on the location and weather” (See Office Action dated 01/12/2009, p. 2). Applicant respectfully asserts that the sections of Cohen cited by the Office fail to disclose or suggest receiving advertising content from the advertising customers via an electronic communications link. As noted above, col. 4, line 64, to col. 5, lines 1-3, of Cohen discusses the selection of an alternate message by the system based on a monitored parameter. This portion of Cohen does not in any way concern the receipt of advertising content at all, let alone receipt of advertising content from the advertising customers via an electronic communications link, as recited in claim 74.

Similarly, the second portion of Cohen cited by the Office also does not discuss receipt of advertising content from the advertising customers via an electronic communications link. In particular, col. 5, lines 24-28, states: “Pursuant to the invention, the individual fixed location stations 20, 22 and 24 store advertiser profiles, message content and coordinated scheduling data. The stations transmit data to the vehicle controller in the form of programming data, message content and scheduling information.” This passage from Cohen merely discusses storage of message content and associated data, such as advertiser profiles and coordinated scheduling data. It does not describe at all how any of the information (i.e. advertiser profiles, message content and coordinated scheduling data) is received by the system or whom the information is received from. In fact, the only mention of any type of communication between the advertising customer and the system is found in a single sentence at col. 5, lines 21-23: “advertiser billing is transmitted to an advertiser 28 via conventional mail, E-mail, facsimile or other means.” This one-way communication clearly does not even suggest the electronic receipt of advertising content from advertisers via an electronic communication link. Therefore, because Cohen does not discuss receipt of advertising content from advertising customers via an electronic communication link, and the Office has not cited any other reference disclosing this feature to combine with Cohen, Applicant respectfully asserts that there is no reason to modify Cohen to obtain the present invention.

Applicant recognizes that if advertising content is going to be displayed, then that content would need to be provided to the system in some manner. However, that alone does not provide adequate grounds to suggest that Cohen teaches “receiving advertising content from the advertising customers via an electronic communications link” as recited in claim 74. Based on the cited portions of Cohen, the advertising content could be communicated to the system in any number of ways and by anyone, including someone other than the advertiser. For example, the advertiser may use regular U.S. mail to send in a hard copy of the advertising content (such as a compact disc) to a company. Then, a representative of the company may access the system and upload the content to the system. In this scenario, the advertiser may not have any access at all to the system, but his content could still be received by the system. The cited portions of Cohen are simply too vague and do not provide enough detail to satisfy the requirements for rejection under 35 U.S.C. §103.

Further, Applicant respectfully submits that, based on Figure 3, Cohen actually teaches away from receiving advertising content from an advertising customer via an electronic communication link. As described in Cohen, Figure 3 illustrates “data communication flow paths” between various components of a system (col. 3, lines 36-39). Applicant notes that, while Figure 3 includes a block purporting to represent an advertiser (block 28), all three of the data communication flow paths that are associated with the advertiser’s block (28) lead *toward* the advertiser’s block (28), with none leading *away from* the advertiser’s block (28). If Cohen purportedly teaches “receiving advertising content from the advertising customers via an electronic communications link” why does Figure 3 not show any data communication flow paths leading *away from* the advertiser’s block (28)? In fact, all of the other blocks in Figure 3 have arrows in both directions (i.e., to and from communicating components) for every single communication flow path. Thus, it is clear that the unidirectional nature of the arrows representing the data communication flow paths that are directly associated with the advertiser’s block (28) in Figure 3 was intentional and not trivial.

The specification of Cohen further supports the conclusion that Figure 3 of the Cohen actually provides evidence of teaching away from the limitations recited in claim 74. In particular, the only electronic activity involving the advertiser described in Cohen is the advertiser *receiving* billing via “e-mail, facsimile, or other means” (col. 5, lines 21-23). This is

consistent with the only data communication flow paths that are associated with the advertiser's block (28) in Figure 3 leading *toward* the advertiser's block (28), with none leading *away from* the advertiser's block (28). Given the above-noted teaching of Figure 3, Applicant respectfully submits that Cohen actually teaches away from receiving advertising content from the at least one advertising customer, as recited in claim 74. Consequently, Cohen should not be modified or combined with any other reference to obtain the present invention.

The Office is Improperly Taking Official Notice of Facts

Claim 74 also recites "providing the at least one advertising customer the opportunity to *electronically* order display of advertising content on the at least one selected display screen *via the advertising customer interface*." As noted above, the Office addressed the electronic ordering and customer interface aspects separately from the other aspects of this limitation. In particular, the Office argued that Cohen teaches "receiving advertisers profiles, the advertisers choosing where and under what weather conditions (i.e. scheduling) to display the advertisements" (See Office Action dated 01/12/2009, p. 3). The Office pointed to col. 2, lines 58-61; col. 4, lines 54 to col. 5, lines 1-3; and col. 5, lines 24-27 as support for this argument. *Id.* All three of these excerpts are discussed above. As pointed out above, claim 74 recites that the at least one advertising customer is able to select at least one particular display screen and electronically order display of advertising content on the selected display screen via an advertising customer interface. The sections of Cohen cited by the Office only vaguely refer to allowing advertisers to choose where and when advertisements are displayed, and do not mention allowing advertisers to select specific display locations as recited in claim 74. In fact, the Office admitted that "Cohen is silent as to the means used by the advertisers to order and schedule the display" (See Office Action dated 01/12/2009, p. 3).

In order to overcome Cohen's deficiency regarding electronic ordering and the use of an advertising customer interface, the Office took Official Notice "that it is old and well known at the time of Applicant's invention to electronically by means of a website and the like to order advertisements from a content provider" and argued that "it would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included in the system of Cohen electronically [sic] means for ordering because such a modification would provide the

convenience of ordering using such known methods as the internet.” *Id.* The Office’s position is provided without any evidentiary support whatsoever, and falls far short of the standard required in order to properly take Official Notice. See MPEP 2144.03.

Taking Official Notice of facts without documentary evidence is permissible only in very limited circumstances. For example, it is not permissible to take Office Notice of facts which are not “capable of instant and unquestionable demonstration as being well-known” as required by MPEP 2144.03. And “[i]t is never appropriate to rely solely on ‘common knowledge’ in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based.” *Id.* Facts for which Official Notice is taken may only be used to “‘fill in the gaps’ in an insubstantial manner.” *Id.* Yet, in the present Office Action, the Office takes Official Notice of the only “facts” which the Office asserts are not taught by Cohen.

Also, to the extent that websites were generally known at the time of the present invention, that does not automatically mean that permitting advertisers to order the display of advertising content at selected display locations via an advertising customer interface was also known. Applicant therefore asserts that the Examiner must produce some supporting evidence in order for such Official Notice to be proper.

In response to the Applicant’s arguments regarding the improper nature of the Official Notices taken, the Office argued that “Applicant hasn’t created a reasonable doubt of the facts taken Official Notice of and therefore the Official Notice has been maintained” and the Office instructed Applicant to “See MPEP 2144.03 where In re Boon is mentioned” (See Office Action dated 01/12/2009, p. 6). However, the Office is not only inexplicably relying on language taken from an old version of the MPEP, the recited principal is no longer valid. Applicant has no obligation to create a “reasonable doubt of the facts taken Official Notice of.” Rather, Applicant must merely point out the errors in the action taken by the Office.

Section 2144.03 of the current version of the MPEP (Eight Edition, Rev. 7) no longer includes any citation to In re Boon. In fact, the citation to In re Boon was removed from this

section of the MPEP in February, 2003 when the Eighth Edition, Rev. 1 was released.³ MPEP 2144.03 has been re-written since that time to include a specific section addressing challenges by an Applicant to factual assertions made by the Office (See MPEP 2144.03(c)). The current version of MPEP 2144.03 does not include any discussion suggesting that the Applicant has a duty to create a reasonable doubt regarding the facts taken Official Notice of by the examiner. In fact, the current version of MPEP 2144.03 states that, in order to adequately traverse an assertion of Official Notice, “an applicant must specifically point out the supposed errors in the examiner’s action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art.” MPEP 2144.03 goes on to state that “a general allegation that the claims define a patentable invention without any reference to the examiner’s assertion of official notice would be inadequate.” Clearly, based on the arguments presented in the previous paragraph as well as in Applicant’s response to the previous Office Action, the Applicant has made a specific reference to the examiner’s assertion of official notice and stated why the noticed fact is not considered to be common knowledge or well-known within the art. As a result, in accordance with the current version of MPEP 2144.03(c), “the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained.”

The Office also touched on the portion of claim 74 reciting use of an advertising customer interface in the “Response to Arguments” section of the current Office Action. Specifically, the Examiner argued that “since Cohen teaches using advertisers (sic) profiles, the advertisers choosing where and under what weather conditions (i.e. scheduling) to display the advertisements then the system of Cohen has to be receiving this information from the advertisers somehow and the Examiner had taken Office Notice that using electronic communication link is well known in order to receive and transmit information” (See Office Action dated 01/12/2009, p. 5). Cohen fails to describe the advertiser/customer profiles in any detail, so it is not clear that these profiles contain any information at all that would need to be submitted by the advertiser. They may consist entirely of information generated and stored by the system. Applicant acknowledges that the advertiser preferences regarding a location zone and weather conditions would need to be communicated to the system in some manner.

³ It should also be noted that the language from a prior MPEP regarding the Applicant’s supposed duty to “create a reasonable doubt of the facts taken Official Notice of” and citing *In re Boon* also ignores the fact that the old version of the MPEP was addressing the taking of judicial notice by the BPAI—not Official Notice by an examiner.

However, as discussed above this information could be communicated to the system in any number of ways and by anyone, including someone other than the advertiser. For instance, a representative of the company may contact the advertiser via letter and request such information. The advertiser may reply with a letter, and the representative may then input the information into the system. In such a scenario, the advertiser would not have any access to the system, nor would the information be communicated via an advertising customer interface, as recited in claim 74. The disclosure of Cohen is simply too vague regarding any type of communication between the advertiser and the system to disclose an advertising customer interface as recited in claim 74.

Additionally, Applicant points out that, contrary to the Office's assertion, the Office did not take Official Notice that "using electronic communication link is well known in order to receive and transmit the information." Applicant asserts there are only two instances of Official Notice in the current Office Action (See Office Action dated 01/12/2009, pp. 3-4), neither of which describe the general fact that "using electronic communication link is well known in order to receive and transmit the information." Even if Official Notice of such a fact was proper, which Applicant does not concede, Applicant submits that such a general, vague fact is not sufficient to disclose use of an advertising customer interface as recited in claim 74.

Accordingly, for all of the reasons stated above, Applicant respectfully submits that the combined art of record fails to render present claim 74 obvious in accordance with MPEP 2143, and respectfully requests that the rejection be withdrawn.

Similarly, when rejecting claims 22-23, the Office took Official Notice "that it is old and well known in the imaging arts to detect and automatically calibrate the defective pixels in order to improve the image" (See Office Action dated 01/12/2009, p. 4). As with the other instance of Official Notice discussed above, Applicant respectfully submits that the facts asserted are not capable of instant and unquestionable demonstration as being well-known. (MPEP 2144.03). Applicant therefore asserts that the Examiner must produce some supporting evidence in order for such Official Notice to be proper. Accordingly, Applicant respectfully submits that the combined art of record fails to render present claims 22-23 obvious in accordance with MPEP 2143, and respectfully requests that the rejections be withdrawn.

Rejection of Other Dependent Claims is Also Not Supported by the Art of Record

With respect to dependent claims 15-17, Applicant respectfully submits that the art of record fails to teach or suggest all of the limitations recited in each of these claims in accordance with MPEP 2143.03. In particular, claim 15 recites reviewing content prior to display for appropriateness. Claim 16 recites verifying the displaying of the content, and claim 17 recites the method of claim 16 wherein the verifying comprises capturing image and time data of the display of the content. The Office argued that Cohen “further teaches verifying the display for appropriateness of the time and content of the display” and pointed again to col. 4, lines 64- col. 5 lines 1-3 (See Office Action dated 01/12/2009, p. 4). The Office reiterated this argument in the “Response to Arguments” section of the current Office Action by stating “With respect to claim 15-17, contrary to Applicant’s arguments, Cohen teaches on col. 4, lines 64 to col. 5, lines 1-3, verifying the display for appropriateness of the time and content for the particular display” (See Office Action dated 01/12/2009, p. 6). As discussed above, this portion of Cohen discusses the selection of an alternate message by the system based on a monitored parameter, not the content of the message. It says absolutely nothing about verifying appropriateness of content prior to display, nor verifying the display of content. Neither this portion nor any other portion of Cohen discusses reviewing the content for appropriateness prior to display, as recited in claim 15.

The cited section of Cohen also fails to disclose verifying that the content was actually displayed (claim 16), and, more particularly, verifying that the content was actually displayed by capturing image and time data, as recited in claims 16 and 17. Inexplicably, these particular limitations in claims 16 and 17 were not even addressed by the Office, and Applicant has no idea where in Cohen there is any teaching or suggestion of these additional features. Applicant raised this very same issue in its response to the previous Office Action, yet the Office has yet to respond.

Because Cohen does not discuss the limitations recited in claims 15-17 and the Office has failed to cite any other art that includes such discussions, Applicant respectfully asserts that there is no reason to modify Cohen to obtain the present invention. Accordingly, Applicant respectfully submits that the combined art of record fails to render present claims 15-17 obvious in accordance with MPEP 2143, and respectfully requests that the rejections be withdrawn.

All limitations recited in a claim must be considered when determining the patentability of the claim against the prior art, even if the claim is also rejected under 35 U.S.C. §112. See MPEP 2143.03 and 2173.06. The Office failed to address every limitation recited by claim 14 in the Office Action dated 01/12/2009. Specifically, the Office failed to address the limitation recited in claim 14, which recites “the method of claim 74 further comprising converting a format of the advertising content into a single format for display.” Once again this omission was brought to the Office’s attention in the response to the previous Office Action, yet no explanation has been provided. For this reason alone, the outstanding Office Action should not have been made final. Applicant once again has not been provided with a full and fair opportunity to respond to the rejection. As a result of the Office’s failure to address these limitations in the context of any rejection, any subsequent office action may not be made final. See MPEP 706.07(a). Applicant respectfully requests that the Office explicitly address each and every limitation recited in each of the claims, and explicitly address each and every argument made by Applicant herein, in any subsequent Office Action.

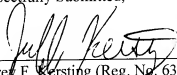
Conclusion

While several distinctions have been noted over the art of record, Applicant notes that there are several other limitations recited in the present claims which are neither taught nor suggested by the art of record. Applicant expressly reserves all rights and arguments with respect to distinctions not explicitly noted herein. In addition, to the extent that the amendments constitute a narrowing of the claims, such narrowing of the claims should not be construed as an admission as to the merits of the prior rejections. Indeed, Applicant traverses the rejections and preserves all rights and arguments. To the extent that any particular statement or argument by the Office in the pending Office Action has not been explicitly addressed herein, the same should not be construed as an acquiescence or admission by the Applicant that such statements or arguments by the Office are accurate or proper.

Based on the foregoing, all pending claims are in a condition for allowance. Accordingly, Applicant respectfully requests reconsideration and an early notice of allowance. Should the Examiner wish to discuss the amendments or arguments made herein, Applicant invites the Examiner to contact the undersigned at (513) 651-6739 or via e-mail at jkiersting@fbtlaw.com.

The Commissioner for Patents is hereby authorized to charge any deficiency, including any fees required for an extension of time not already paid for or any other required fees not already paid for, or to credit any overpayment of fees, to Frost Brown Todd LLC Deposit Account No. 06-2226.

Respectfully Submitted,



Jeffrey F. Kersting (Reg. No. 63,100)
Frost Brown Todd LLC
2500 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202-4182
513-651-6739 (direct)
513-651-6981 (fax)
jkersting@fbtlaw.com

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